**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO. 193 OF 2005.**

1. Deputy Collector and (S.D.O.)
Mormugao,
Vasco-da-Gama, Goa.

2. Executive Engineer,
W.D. VI,
P.W.D. Fatorda,
Margao, Goa. .... Appellants.

Versus

Shri Diogo Piedade Inacio Falcao,
r/o H.No. 30, Chaulwaddo,
Betalbatim, Salcete, Goa,
(since deceased represented by his
legal heirs) :-

1a) Rosa Maria Crasto e Falcao
(expired)
1b) Santana Helodia Falcao.
1c) Maria Filomena Falcao.
1d) Tome Ddioginho Falcao
(expired)
1e) Custodio Filipe Falcao.
1f) Esperanco Falcao.
1g) Succorro Concesao Falcao.
1h) Remetina Falcao,
All majors, r/o H. No. 30,
Chaulwaddo, Betalbatim,
Salcete, Goa. .... Respondents.

Shri G. Shirodkar, Additional Government Advocate for the Appellants.

Respondents absent, though served.

**CORAM: R.M.S. KHANDEPARKAR, J.**

**DATE: 3rd FEBRUARY, 2006.**

**ORAL JUDGMENT:**

Heard the learned Additional Government Advocate for the appellants. None present for the respondents though served with specific notices that the appeal would be disposed of finally at the admission stage itself. Apparently, the respondents do not seem to be interested in contesting the proceedings.

2. The appellants challenge the Award dated 16th April, 2005 passed by the Reference Court, Margao in Land Acquisition Case No. 11/2000. By the impugned award the Reference Court has enhanced the market value of the acquired land from Rs.4/- to Rs.28/- per sq.m. in addition to the benefits available to the claimants in terms of the provisions under Section 23 of the Land Acquisition Act, 1894.

3. Section 4 Notification was published in the Government Gazette dated 30th November, 1992 whereby the Government sought to acquire land surveyed under No. 51/11 situated in the village Betalbatim belonging to the respondents/claimants for the purpose of construction of road from Nagwado Humto via cemetery Bhimwado Beanch and from

Ranwado Chapel to Betalbatim main road in V.P. Betalbatim, Salcete. After issuance of necessary declaration under Section 6 of the said Act, and complying with the formalities as required under Section 9 of the said Act, Award in terms of Section 11 of the said Act came to be passed whereby compensation at the rate of Rs.4/- per sq.m. was awarded by the Land Acquisition Officer. Being aggrieved by the said award of compensation, the respondents-claimants preferred an application under Section 18 of the said Act and the Reference Court, after hearing the parties, enhanced the same under the impugned Award to Rs.28/- per sq.m. Hence the present appeal.

4. The sole question which arises for consideration in the matter is whether on the basis of the materials placed on record, the Reference Court was justified in enhancing the compensation from Rs.4/- to Rs.28/- per sq.m.

5. In order to justify the claim for enhancement, the respondent-claimant examined himself as AW.1 and produced four documents namely Award dated 15th October, 2004 passed by the Reference Court in Land Acquisition Case No.203/99, Sale Deeds dated 7th January, 1986 and 9th January, 1986 in relation to two portions of a property admeasuring 675 sq.m. sold by one Menino Leitao and another to

Antonio Fernandes for Rs.95,970/- i.e. Rs.47,985/- in relation to one plot under sale deed dated 7.1.86 and an amount of Rs.47,185/- in relation to another plot under sale deed dated 9th January, 1986. Yet another sale deed was produced, dated 3rd July, 1990 executed by one Smt. Nimmi Beda Da Fatima Blandina Rodrigues Cana e Coelho alias Nimmi Coelho of an area of 600 sq.m. bearing survey No.169/19 from the village of Betalbatim for Rs.1,57,500/-. In the affidavit filed in the course of the evidence by the claimants, it was the case of the claimants that the land covered under Land Acquisition Case No.203/99 was situated at a distance of 1 Km. away from the land under consideration and while the land under consideration is a flat terrain, the land of Menino Leitao comprised of different levels of land. As regards the sale deeds dated 7th January and 9th January, 1986, it was the case of the claimants that the same is situated at a distance of 1 km. away from the property in question and as regards the property covered under Sale deed dated 3rd July, 1990, the same is situated at a distance of 1-1/2 km. away from the acquired property. It was the further contention of the claimant that 7 coconut trees situated in the acquired property were yielding about 100 to 120 coconuts per year per coconut tree. It was his further case that the acquired land is a garden land and is situated at a distance of 1.5 kms. away from the school, office of Village Panchayat of Betalbatim, Bank of Baroda and the Church of Betalbatim besides there

are residential houses in the vicinity and the locality is known as Chawl vaddo.

6. Bare reading of the evidence led by the claimant would therefore disclose that the enhancement was claimed solely on the basis of the four documents produced by the claimant, out of which three were sale deeds and one an award in land acquisition case. Admittedly the land covered in Land Acquisition Case No.203/99 as well as in the sale deeds are situated at a distance of about 1 km to 1-1/2 km away from the acquired property. Apart from disclosing dissimilarity between the land under acquisition and the land which was subject matter of the Award in L.A.C. No.203/99 in relation to the terrain of the land, the claimant has not disclosed anywhere in his evidence any of the similarities between the land under acquisition and the land which was subject matter either of the said award or the said sale deeds. It is settled law that in order to enable the parties to place reliance upon the documents like award or sale deed in relation to other properties for the purpose of justifying the enhancement of compensation under the said Act, it is absolutely necessary to establish the issue of comparability between the land under acquisition and the pieces of land which are subject matter of such other documents. In the absence of comparability being established, mere production of documents relating to other

properties in the form of sale deeds or award can be of no help. There are catena of decisions on this aspect, but suffice to refer to the decision in the matter of ***Panna Lal Ghosh and others v. Land Acquisition Collector and others*** reported in **2004 AIR SCW 66*, V. Hanumantha Reddy (Dead) by Lrs. v. Land Acquisition Officer & Mandal R. Officer*** reported in **2004 AIR SCW 75** and ***Viluben Jhalejar Contractor (Dead) by Lrs. v. State of Gujarat*** reported in **(2005) 4 S.C.C. 789.** The law on the point being well settled, in the absence of such comparability between the land under acquisition and land which was covered under the documents produced by the claimant being established and there being no other evidence led by the party to justify the enhancement of compensation, apparently the Reference Court erred in enhancing the compensation from Rs.4/- to Rs.28/- per sq.m. The records of the Court below apparently disclose that the claimant did not rely upon any other evidence nor examined any other witness to justify the claim for enhancement of compensation.

7. The Reference court in its Judgment has nowhere referred to the issue of comparability between the land acquired and the pieces of land which were subject matter of either the award or the sale deeds. On the contrary, the specific finding arrived at by the Reference Court is that the sale deeds namely Exhs. 23, 24 and 25 cannot be used as

comparable instances to assess the market value of the acquired land. As regards the award, the Reference Court has observed that the land which was subject matter of the award is situated at a distance of 1 km away from the land in question. It has also been observed in the impugned award that the claimant has also stated in her cross-examination that in between the acquired land and the road there are many properties of different owners and that before constructing the road, one had to pass through the properties of others in order to have access to the acquired land from the main road. Thus it is seen that there are some minus factors to the acquired land in comparison with the land in L.A.C. No.203/99. Apparently the approach of the Reference Court is totally wrong. While considering the issue of comparability, the Reference Court has to ascertain the similarity between the two pieces of land and only thereafter find out the dissimilarity between such land. Merely observing that there are some dissimilarities between the land in question which was subject matter of earlier award, that itself cannot lead to the conclusion that there are points of similarities between the two pieces of land. Whether there are instances between two pieces of land or not is to be ascertained on the basis of the materials on record and there has to be a specific finding in that regard. There cannot be a presumption about the similarity of two pieces of land even though they may be

situated adjoining to each other. In this regard reference can advantageously be made to the decision of the Apex Court in the matter of ***Kasturi and others v. State of Haryana*** reported in **(2003) 1 SCC 354 and *V. Hanumantha Reddy (dead) by Lrs. v. Land Acquisition Officer & Mandal R. Officer*** reported in **2004 AIR SCW 75.** The Reference Court has to take into consideration positive and negative factors in relation to the acquired land and thereafter ascertain the market value of such land. In fact the Apex Court in **Viluben Jhalejar Contractor's case** (supra) has held that :-

> " The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under :
>
> | Positive factors | Negative factors |
> |---|---|
> | (i)smallness of size | (i) largeness of area |
> | (ii)proximity to a road | (ii) situation in the interior at a distance from the road |
> | (iii)frontage on a road | (iii) narrow strip of land |

| | |
|---|---|
| | with very small frontage compared to depth |
| (iv) nearness to developed area | (iv) lower level requiring the depressed portion to be filled up |
| (v) regular shape | (v) remoteness from developed locality |
| (vi) level vis-a-vis land under acquisition | (vi) some special dis-advantageous factors which would deter a purchaser |
| (vii) special value for an owner of an adjoining property to whom it may have some very special advantage. ” | |

8. For the reasons stated above, therefore, the impugned award cannot be sustained and is liable to be quashed and set aside and in the absence of any evidence being produced to justify the enhancement of compensation, the compensation awarded by the Land Acquisition Officer at the rate of Rs.4/- per sq.m. as market value of the acquired land will have to be confirmed. Needless to say that the claimants are entitled to get other statutory benefits which they are entitled under the provisions of the said Act.

9. In the result, therefore, the appeal succeeds. The impugned order to the extent it enhanced the compensation over and above awarded by the Land Acquisition Officer is hereby set aside and the award made by the Land Acquisition Officer is confirmed in relation to

the market value of the land. There shall be no order as to costs.

**R.M.S. KHANDEPARKAR, J.**

**sl.**